IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

WP(C).No. 26629 of 2007(T)

OS.47/2006 of MUNSIFF COURT, PAYYANNUR

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PETITIONER:

EANDY KADUKKARAM RUBBER UTHPATHAKA SANGAM, KADUKKARAM REG.NO.361/99 P.O.KAKKARA, REPRESENTED BY ITS PRESIDENT, V.P.DASAN, S/O.PAPPAN, AGED 47 YEARS, PERINGALA, P.O.CHITTADI KANNUR DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT:

VAZHAPPALLI SIVAN, S/O.PAPPAN, AGED 56 YEARS, KADUKKARAM, P.O.KAKKARA, PERINGOME AMSOM DESOM, KANNUR DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C).NO.26629 OF 2007-T

Dated this the 6th day of September, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P11 order. By the said order the court below directed Advocate Sri.V.K. Raveendran, who previously inspected the property, to inspect the plaint schedule property with the assistance of village assistant. The grievance of the writ petitioner is to the effect that along with the suit he moved for issuance of a commission and another commissioner had inspected the property and reported about the facts and features of the property on the date of the inspection. According to the learned counsel, the court should have appointed the said Advocate as the commissioner and not Sri.V.K. Raveendran. He had also invited my attention to Ext.P9 order whereby the court on the second occasion appointed Sri.V.K.Raveendran. The court found that since it is not an application for remitting the previous commissioner's report, a new commission can be appointed. The said approach of the court below is totally erroneous. Unfortunately, this order was not challenged before any authority. Sri.V.K.Raveendran had inspected the property and submitted a plan

and report. In other words, there are two reports submitted by two different commissioners and on the third occasion, the court below has directed the 2nd commissioner to inspect the property with the assistance of the village assistant. I am conscious of the fact that it is not correct on the part of the court to go on appointing successive commissioners and invite conflicting reports whereby the task of determining controversy between the parties become very hazardous. This practice has been again and again deprecated by the court. But, unfortunately, in this case things had happened and now this Court has to invoke Article 227 to protect the interest of the parties.

2. Therefore, I make it clear that even if Sri.V.K.Raveendran submits a plan and report for the second time, the court shall not brushes aside the first report submitted by the first commissioner and the defendant must be given an opportunity to prove that report and, if properly proved, the court has to necessarily give credentials to the same. Since the 2nd commissioner has already re-visited the property, I do not want to interfere with the same at this stage, but I reiterate the validity of the first report as mentioned by me in the previous sentence has to be considered.

Needless to say that the writ petitioner also shall be permitted to file a work memo before the commissioner and he will also have an opportunity to challenge the report and plan already submitted by Sri.V.K.Raveendran and the plan to be submitted by Sri.V.K.Raveendran. I am informed that there is a petition for violation of injunction pending before the court and the court has to consider all these broad aspects while deciding that matter as well.

With these observations, the writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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